

1 NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET

2 Department for Environmental Protection

3 Division of Waste Management

4 (Amended After Hearing)

5 401 KAR 47:095. Environmental [~~Administrative procedures concerning the environmental~~]  
6 remediation fee.

7 RELATES TO: KRS 224.43-500, 224.43-505

8 STATUTORY AUTHORITY: KRS 224.01-010, 224.10-100, 224.43-500, 224.43-505

9 NECESSITY, FUNCTION AND CONFORMITY: This administrative regulation  
10 governs [~~establishes procedures concerning collection, submittal and reporting of~~] the  
11 environmental remediation fee established [~~that is required~~] by KRS 224.43-500.

12 Section 1. [~~Applicability. This administrative regulation applies to all persons required to~~  
13 ~~collect and to remit the environmental remediation fee described in KRS 224.43-500.~~

14 ~~Section 2.~~] Remittance of the Environmental Remediation Fee by Municipal Solid Waste  
15 Disposal Facilities [~~Contained Landfills~~]. (1) [~~All wastes accepted at each contained landfill~~  
16 ~~shall be weighed.~~]

17 [(2)] The owner or operator of a municipal solid waste disposal facility [~~the contained~~  
18 ~~landfill~~] shall remit to the Kentucky Pride Fund [~~collect~~] an environmental remediation fee  
19 equivalent to [~~of~~] one dollar and seventy-five cents (\$1.75) per ton of waste disposed at the  
20 facility [~~contained landfill~~].

1        (2) If a less than one (1) acre construction/demolition debris landfill does not have  
2 adequate scales necessary to weigh the waste, the environmental remediation fee shall be  
3 calculated and assessed using a conversion factor calculated as follows:

4        (a) For compacted loads, the fee shall be one dollar and seventy-five cents (\$1.75) for  
5 every three (3) cubic yards of waste;

6        (b) For all other loads, the fee shall be one dollar and seventy-five cents (\$1.75) for every  
7 five (5) cubic yards of waste.

8        (3) The owner or operator of the facility ~~[contained landfill]~~ shall remit quarterly  
9 payments of the environmental remediation fee ~~[to the Kentucky Pride Fund]~~, accompanied by a  
10 completed and signed [the] document entitled “Environmental Remediation Fee Reporting and  
11 Submittal Form” (DEP form 5032) ~~[incorporated by reference in Section 5 of this administrative~~  
12 ~~regulation]~~.

13        (4) Quarterly payments shall be equivalent to one dollar and seventy-five cents (\$1.75)  
14 multiplied times the number of tons of waste disposed in the municipal solid waste disposal  
15 facility ~~[contained landfill]~~ during that quarter.

16        ~~[(5)]~~ Quarterly payments shall be due on April 30, July 31, October 31 and January 30 of  
17 each year.

18        Section 2 [3]. Remittance of the Environmental Remediation Fee By Certain Transfer  
19 Stations. (1) The owner or operator of a transfer station accepting waste for disposal at an out-of-  
20 state municipal solid waste disposal facility shall remit to the Kentucky Pride Fund an  
21 environmental remediation fee equivalent to one dollar and seventy-five cents (\$1.75) per ton of  
22 waste to be disposed out-of-state. ~~[The environmental remediation fee shall not be collected at~~  
23 ~~transfer stations except for municipal solid waste transferred out-of-state.]~~

(2) The owner or operator of the transfer station shall utilize weigh scales, if available, to determine the tonnage of waste that will be disposed out-of-state.

(3) If a transfer station collecting the environmental remediation fee does not have adequate scales necessary to weigh the waste, the environmental remediation fee shall be calculated and assessed using a conversion factor calculated as follows:

(a) For compacted loads, the fee shall be ~~[transfer station shall collect]~~ one dollar and seventy-five cents (\$1.75) for every three (3) cubic yards of waste;

(b) For all other loads, the fee shall be ~~[transfer station shall collect]~~ one dollar and seventy-five cents (\$1.75) for every five (5) cubic yards of waste.

~~(4) [The environmental remediation fee shall be collected by the owner or operator of the transfer station.]~~

~~(5)~~ The owner or operator of the transfer station shall remit ~~[quarterly]~~ payments quarterly, ~~[to the Kentucky Pride Fund]~~ accompanied by a completed and signed ~~[the]~~ document entitled "Environmental Remediation Fee Reporting and Submittal Form" (DEP Form 5032) ~~[incorporated by reference in Section 5 of this administrative regulation].~~

(5) ~~(6)~~ Quarterly payments shall be equivalent to one dollar and seventy-five cents (\$1.75) multiplied times the number of tons of waste to be disposed at an out-of-state municipal solid waste disposal facility during that quarter.

~~(7)~~ Quarterly payments shall be due on April 30, July 31, October 31 and January 30 of each year.

~~(8)~~ ~~The environmental remediation fee shall not be collected at transfer stations for loads less than one (1) ton.~~

1       Section 4. Remittance of the Environmental Remediation Fee By  
2   Construction/Demolition Debris Landfills. (1) The owner or operator of a  
3   construction/demolition debris landfill shall collect an environmental remediation fee of one  
4   dollar and seventy five cents (\$1.75) per ton of municipal solid waste disposed at the landfill.

5       (2) The owner or operator of the construction/demolition debris landfill shall utilize  
6   weigh scales, if available, to determine the tonnage of waste disposed at the landfill.

7       (3) If a construction/demolition debris landfill collecting the environmental remediation  
8   fee does not have adequate scales necessary to weigh the waste, the environmental remediation  
9   fee shall be calculated using a conversion factor described in Section 3(3)[(4)] of this  
10   administrative regulation.

11       (4) The owner or operator of the construction/demolition debris landfill shall remit  
12   quarterly payments to the Kentucky Pride Fund accompanied by the “Environmental  
13   Remediation Fee Reporting and Submittal Form” incorporated by reference in Section 5 of this  
14   administrative regulation.

15       (5) Quarterly payments to the Kentucky Pride Fund shall be equivalent to one dollar and  
16   seventy five cents (\$1.75) multiplied times the number of tons of waste disposed at the  
17   construction/demolition debris landfill during that quarter.

18       (6) Quarterly payments shall be due on April 30, July 31, October 31 and January 30 of  
19   each year.]

20       Section 3 [5]. Incorporation by Reference. (1) The “Environmental Remediation Fee  
21   Reporting and Submittal Form” (DEP Form 5032)<sup>2</sup> is hereby incorporated by reference.

1           (2) This material may be inspected, copied, or obtained, subject to applicable copyright  
2 law, at the Division of Waste Management, 14 Reilly Rd, Frankfort, KY 40601, (502) 564-6716,  
3 Monday through Friday, 8:00 a.m. to 4:30 p.m., eastern time, excluding state holidays.

401 KAR 47:095 is approved for promulgation.

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Henry C. List, Secretary  
Natural Resources and Environmental  
Protection Cabinet

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Date

## **REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Administrative Regulation #: 401 KAR 47:095

Contact Person: Michael S. Mullins

(1) Provide a brief summary of:

(a) what the administrative regulation does:

This administrative regulation creates requirements to be followed in assessing, collecting, and remitting the environmental remediation fee established in KRS 224.43.

(b) The necessity of this administrative regulation:

This regulation is required to meet the requirements of KRS 224.43.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

This administrative regulation creates a conversion formula required by KRS 224.43.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This administrative regulation will provide guidance to affected entities required to assess, collect, and remit the environmental remediation fee.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How this amendment will change the existing administrative regulation: Not applicable.

(b) The necessity of the amendment to this administrative regulation: Not applicable.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

This administrative regulation affects owners and operators of contained landfills, construction/demolition debris landfills (CDDLs), and transfer stations. There are 26 contained landfills operating in Kentucky; there are 173 CDDLs in Kentucky; there are 188 transfer stations in Kentucky.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment.

These entities will be required to establish their own procedures and protocols to collect the environmental remediation fee; they will also be required to remit the fee quarterly.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There no added or reduced costs to the administrative body. The fees collected will support the programmatic costs up to \$750,000 per year as allowed by the statute.

(b) On a continuing basis: There are no added or reduced costs to the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation.

Implementation of the program is funded via the environmental remediation fee collected by certain affected entities and remitted to the Kentucky Pride Fund. A portion of the Pride Fund is set aside for costs for implementation and enforcement of the program.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

No increase in fees is necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

This administrative regulation does not establish fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? (Explain why tiering was or was not used)

No. The statute is clear in mandating that all waste shall be assessed at \$1.75 per ton. No allowances are made for smaller generators.



## FISCAL NOTE ON LOCAL GOVERNMENT

Administrative Regulation #: 401 KAR 47:095      Contact Person: Michael S. Mullins

New X                      Amendment \_\_\_\_

1.      **Does this administrative regulation relate to any aspect of local government, including any service provided by that local government?**

Yes X                      No \_\_\_\_

2.      **State what unit, part of division of local government this administrative regulation will affect.**

This administrative regulation will affect local governments that own or operate contained landfills, CDDLs, and transfer stations.

3.      **State the aspect or service of local government to which this administrative regulation relates.**

This administrative regulation relates to solid waste management agencies of local government.

4.      **Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.**

**Revenues (+/-):**

There is no known effect on current revenue, however, the enabling statute provides that a large portion of the environmental remediation fees collected will be returned to the localities to address solid waste management issues.

**Expenditures (+/-):**

There is no known effect on the current expenditures unless the local government is required to make administrative changes to allow for remittance of the environmental remediation fee.

**Other Explanation:**

Local governments will also benefit from the other provisions of HB174 which provide services and support in the closure of old historic landfills and other grant programs to abate the effects of litter and open dumping.

**SUMMARY OF MATERIAL  
INCORPORATED BY REFERENCE IN  
401 KAR 47:095**

This administrative regulation incorporates by reference the “Environmental Remediation Fee Reporting and Submittal Form” (DEP Form 5032). This document is used to allow a standardized format for those entities that must collect and remit the environmental remediation fee established by HB174 (2002). This document pertains to solid waste management as described in KRS 224.43. No funds, rights, or duties are affected by this material.

This document consists of 1 page. This document was amended after hearing. Below is a summary of the changes made since the public hearing.

A space was provided on the form for the Permit Number and the document was shortened from two pages to one.